

Polygraphing without SOP or legal basis: An investigation into the right to judicial protection¹

Polygraph is one of the widely-adopted scientific evidence alongside fingerprint, handwriting and DNA analysis. It is also considered by some to be the most controversial. The existing Code of Criminal Procedure in Taiwan does not specify admissibility or validity of polygraph. There has been no statistical support to date to prove that the use of polygraph increases the number of guilty verdicts. Despite the contentions, polygraph test is largely admissible throughout Taiwan and presented as forensic report in courts. Control Yuan members initiated an investigation to look into the applicability of polygraph test.

Amendments to the Code of Criminal Procedure have tightened the criteria for evidence validity, preventing extrajudicial evidence being used to convict the defendant. In practice, however, polygraph is generally presented as forensic reports. Contrary to standard practice whereby forensic reports always come with a affidavit signed by the responsible forensic personnel, a polygraph is valid and admissible with or without such recognizance, as long as it has been administered by an authorized body. The use of polygraph has also been considered depriving a person of his or her privilege against self-incrimination. Existing laws do not assign any law enforcement officers to conduct a polygraph test, nor do the laws define the conditions, standard procedure, and remedial measures for potential violations.

In response to Control Yuan's request for a statistical database, the Ministry of Justice explained that convictions are never based on polygraph result as the sole evidence. In practice, the effect of single evidence rule varies from case to case. Further analysis and review are called for to determine the percentage of polygraph being adopted as evidence by prosecuting offices and courts, and its proportion to the percentage of guilty conviction. As such, greater manpower and a more advanced system should be in place before establishing the database. The Ministry of Justice has also agreed to study cases involving the use of polygraph as evidence, along with reasons for dismissing such evidence. The Ministry will recruit scholars and experts, in a project-based approach, to conduct empirical studies on cases within a specific period that have involved the use of polygraph test.

¹ Case no. 1000800325